

## Fishery Conservation and Management

## § 648.201

(1) 44°00' N Lat., 70°00' W Long.;  
(2) 44°00' N Lat., 69°30' W Long.;  
(3) 43°00' N Lat., 69°30' W Long.;  
(4) 43°00' N Lat., 70°00' W Long.; and  
(5) 44°00' N Lat., 70°00' W Long.  
(6) The boundary from Points 4 to 5 excludes the portions Maquoit and Middle Bays east of 70°00' W Long.

(B) July–August River Herring Monitoring/Avoidance Sub-Area 2.

(1) 44°00' N Lat., 69°00' W Long.;  
(2) 44°00' N Lat., 68°30' W Long.;  
(3) 43°30' N Lat., 68°30' W Long.;  
(4) 43°30' N Lat., 69°00' W Long.; and  
(5) 44°00' N Lat., 69°00' W Long.

(v) *September–October River Herring Monitoring/Avoidance Areas.* The September–October River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) September–October River Herring Monitoring/Avoidance Sub-Area 1.

(1) 44°30' N Lat., 68°00' W Long.;  
(2) 44°30' N Lat., 67°00' W Long.;  
(3) 44°00' N Lat., 67°00' W Long.;  
(4) 44°00' N Lat., 68°00' W Long.; and  
(5) 44°30' N Lat., 68°00' W Long.

(B) September–October River Herring Monitoring/Avoidance Sub-Area 2.

(1) 43°00' N Lat., 71°00' W Long.;  
(2) 43°00' N Lat., 70°30' W Long.;  
(3) 42°30' N Lat., 70°30' W Long.;  
(4) 42°30' N Lat., 71°00' W Long.; and  
(5) 43°00' N Lat., 71°00' W Long.

(vi) *November–December River Herring Monitoring/Avoidance Areas.* The November–December River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) November–December River Herring Monitoring/Avoidance Sub-Area 1.

(1) 43°00' N Lat., 71°00' W Long.;  
(2) 43°00' N Lat., 70°00' W Long.;  
(3) 42°00' N Lat., 70°00' W Long.;  
(4) 42°00' N Lat., 69°30' W Long.;  
(5) 41°30' N Lat., 69°30' W Long.;  
(6) 41°30' N Lat., 70°00' W Long.;  
(7) The south-facing shoreline of Cape Cod, MA, 70°00' W Long.;  
(8) 42°00' N Lat., The west-facing shoreline of Cape Cod, MA Long.;  
(9) 42°00' N Lat., 70°30' W Long.;  
(10) 42°30' N Lat., 70°30' W Long.;

(11) 42°30' N Lat., 71°00' W Long.; and  
(12) 43°00' N Lat., 71°00' W Long.

(13) Points 7 and 8 are connected following the coastline of Cape Cod, MA.

(B) November–December River Herring Monitoring/Avoidance Sub-Area 2.

(1) 41°30' N Lat., 72°00' W Long.;  
(2) 41°30' N Lat., 70°00' W Long.;  
(3) 40°30' N Lat., 70°00' W Long.;  
(4) 40°30' N Lat., 70°30' W Long.;  
(5) 41°00' N Lat., 70°30' W Long.;  
(6) 41°00' N Lat., 72°00' W Long.; and  
(7) 41°30' N Lat., 72°00' W Long.

(g) All aspects of the following measures can be modified through the specifications process:

(1) AMs;  
(2) Possession limits;  
(3) River Herring Monitoring/Avoidance Areas; and  
(4) River herring catch caps.

[72 FR 11277, Mar. 12, 2007, as amended at 73 FR 4757, Jan. 28, 2008; 76 FR 11379, Mar. 2, 2011; 76 FR 81850, Dec. 29, 2011; 79 FR 8815, Feb. 13, 2014]

### § 648.201 AMs and harvest controls.

(a) *AMs*—(1) *Herring sub-ACLs and ACL*—(i) *Management area closure.* If NMFS projects that catch will reach 92 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 92 percent of the Area 1A or Area 1B sub-ACL allocated to a seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 92 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(ii) *Herring fishery closure.* If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring

more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.85(d) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, i.e., the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(2) and (3) of this part, may not fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area, for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

(3) *ACL overage deduction.* If NMFS determines that total catch exceeded any ACL or sub-ACL for a fishing year, then the amount of the overage shall be subtracted from that ACL or sub-ACL for the fishing year following total catch determination. NMFS shall make such determinations and implement any changes to ACLs or sub-ACLs, in accordance with the APA, through notification in the FEDERAL REGISTER, prior to the start of the fishing year, if possible, during which the reduction would occur.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring

on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) *Seasonal sub-ACL periods.* The sub-ACL for each herring management area may be divided into seasonal periods by month. Seasonal sub-ACLs for herring management areas, including the specification of the seasonal periods, shall be set through the annual specification process described at § 648.200. The seasonal allocation of sub-ACLs are as follows:

(1) *Area 1A:* Zero percent available for harvest during January–May; 100 percent available for harvest during June–December.

(2) *Area 1B:* Zero percent available for harvest during January–April; 100 percent available for harvest during May–December.

(3) *Area 2:* 100 percent available for harvest during January–December.

(4) *Area 3:* 100 percent available for harvest during January–December.

(e) Up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67° 16.8 W. long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the sub-ACL allocation for Area 1A.

(f) *Carryover*. Subject to the conditions described in this paragraph (f), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from 2013 during 2014, and will add carryover to the applicable sub-ACL(s) in 2015. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring landed from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (f).

[76 FR 11380, Mar. 2, 2011, as amended at 76 FR 56999, Sept. 15, 2011; 78 FR 26169, May 3, 2013; 78 FR 61837, Oct. 4, 2013; 79 FR 52580, Sept. 4, 2014]

#### § 648.202 Season and area restrictions.

(a) *Purse Seine/Fixed Gear Only Area*. Vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A limited access herring vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 – May 31.

(b) *Fishing in Northeast Multispecies Closed Areas*. (1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from the Closed

Areas, including Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, Western GOM Closure Area, as defined in § 648.81(a) through (e), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard a NMFS-approved observer.

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(i) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(ii) A mechanical failure precludes bringing some or all of the catch on board the vessel for inspection; or,

(iii) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(3) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board.

(4) If fish are released prior to being brought aboard the vessel due to any of the above exceptions, the vessel operator must:

(i) Stop fishing and immediately exit the Closed Areas. Once the vessel has exited the Closed Areas, it may continue to fish, but may not fish inside the Closed Areas for the remainder of that trip.

(ii) Complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought